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OFFICE OF PETITIONS

In re Application of :
David B. Anderson et al :
Application No. 09/955,696 : DECISION GRANTING PETITION
Filed: September 19, 2001 : UNDER 37 CFR 1.137(b)
Attorney Docket No. CR1351 :

This is a decision on the petition under 37 CFR 1.137(b), filed July 17, 2005, to revive the above-identified application.

The petition is **GRANTED**.


The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed December 12, 2005, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on March 14, 2006 (March 12, 2006, the due date, was a Sunday).

Initially, it is noted that, prior to any decision by the deciding official having been rendered on the petition to revive, a Notice of Allowability and a Notice of Allowance and Fee (s) Due were mailed on August 14, 2006. As this application was abandoned for failure to timely reply to the final Office action of December 12, 2005, within the extendible six month period provided therefor, the Examiner had no procedural authority with respect to the abandoned application. See Lorenz v. Finkl, 333 F.2d 885, 891, 142 USPQ 26, 30 (CCPA 1964). Therefore, the examiner was without authority to act further in the case absent a grantable petition reviving the application. Nevertheless, in view of this decision granting the petition to revive, the subsequent action taken by the examiner in the mailing of a Notice of Allowability and Notice of Allowance and Fee(s) Due on August 24, 2006 has been ratified.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply, (2) the \$1,500 petition fee, and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the final Office action of December 12, 2005 is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3218.

As noted above, a Notice of Allowance and Fee(s) Due was mailed on August 24, 2006, which requires the submission of the \$1,400 issue fee and the \$300 publication fee. Petitioner is advised that failure to timely submit the issue and publication fees will again result in the abandonment of this application.


Frances Hicks
Petitions Examiner
Office of Petitions